THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 24749 of 2007

Dated: 29.11.2007

Between:

Mogilinidi Venkateswara Rao

... Petitioner

AND

The State of Andhra Pradesh, rep., by its Secretary, Revenue (LA), Secretariat, Hyderabad & others.

... Respondents

Counsel for the petitioner : Sri E.V.V.S. Ravi Kumar

Counsel for the respondents : Assistant Government Pleader for Land Acquisition

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 24749 of 2007

ORDER:-

This writ petition is filed for a writ of mandamus to set aside order dated 11.11.2007 passed by respondent No.2, whereby the objections raised by the petitioner before respondent No.3 were considered and rejected.

Heard Sri E.V.V.S. Ravi Kumar, learned counsel for the petitioner and the learned Assistant Government Pleader for land Acquisition. Sri K. Nageswara Rao, Revenue Divisional Officer-cum-Land Acquisition Officer, Kakinada, East Godavari District, is personally present.

The learned counsel for the petitioner contended that the petitioner was denied the opportunity of personal hearing as envisaged in Section 5A of the Land Acquisition Act, 1894 (for short, 'the Act').

In paragraph 4 of the affidavit filed in support of the writ petition the petitioner averred as under:

> "I submit that on 30.10.2007, I went to the office of the 3rd respondent as per the notice dated -9-2007. I waited in the office of the 3rd respondent from 10.30 a.m. onwards till 5.00 p.m. I was informed by the Superintendent that the 3rd respondent went to camp and that I will be intimated about the enquiry at a later point of time since

the 3rd respondent is not available in the office. Surprisingly, I received the order Ref.G.2/6086/2007 dated 11.11.2007, which is impugned in the present writ petition. The 3rd respondent did not give any opportunity to me to explain the contents of my objections apart from other factual aspects i.e., with regard to partition among the family members etc. A copy of partition list was also submitted along with the objection to the 3rd respondent. The 3rd respondent also did not provide me an opportunity of personal hearing as contemplated under Section 5A(2) of the L.A. Act. I submit that in the objections, I specifically stated that Government land is available in the village. Had the 3rd respondent provided me an opportunity of personal hearing, I would have explained the factual matrix to the 3rd respondent. The value of the land is also more than Rs.13 lakhs per acre but not Rs.2,50,000/- as stated in the order."

In para 6 of the counter-affidavit filed by respondent No.3, the Revenue Divisional Officer, Kakinada stated as under:

"It is further submitted that as the Land Acquisition Officer & Revenue Divisional Officer, Kakinada has applied for casual leave from 29.10.2007 to 31.10.2007 (i.e., 3 days), the District Collector, East Godavari, Kakinada has issued in-charge orders vide E.G. Collector's Ref.A5/315/2006, dated 27.10.2007 keeping the Special Deputy Collector (Land Acquisition), Kakinada Special Economic Zone, Kakinada as incharge for the post of Land Acquisition Officer & Revenue Divisional Officer, Kakinada to look after the current duties until the regular Revenue Divisional Officer joins the duty.

It is submitted that the office of the Special Deputy Collector (Land Acquisition), Kakinada Special Economic Zone, Kakinada was situated in the office of Land Acquisition Officer & Revenue Divisional Officer,

Kakinada itself.

On 30.10.2007, the Special Deputy Collector (Land Acquisition), Kakinada Special Economic Zone, Kakinada is present in the office for attending to the regular duties and also for conducting the enquiry under Section 5A of Land Acquisition Act. But, the landowners have not attended the personal hearing on 30.10.2007. The petitioners were given opportunity but they have not chosen to utilize it. They have thus defaulted utilizing the opportunity of personal hearing.

All the objections received through registered post were referred to the Tahsildar, U.Kothapalli for submission of his report. On receipt of the report from the Tahsildar, U.Kothapalli, the Land Acquisition Officer & Revenue Divisional Officer, Kakinada has examined the objections carefully and submitted his remarks on the objections on 02.11.2007 to the Collector, East Godavari, Kakinada for passing orders as deemed fit.

The District Collector, East Godavari, Kakinada has considered the objections and examined the objections of the landowners and remarks of the Land Acquisition Officer and Revenue Divisional Officer, Kakinada and finally passed orders on 11.11.2007 rejecting the objections vide E.G.Collector's Ref.G2/6086/2007. The Land Acquisition Officer and Revenue Divisional Officer, Kakinada has communicated the orders of Collector, East Godavari, Kakinada on 14.11.2007 to the landowners."

At the hearing, Sri K. Nageswara Rao stated that since he was on leave, the Special Deputy Collector, Land Acquisition, Kakinada Special Economic Zone, held enquiry and that the petitioner has not attended the personal hearing. He, however, admitted that the record does not show that Special Deputy

Collector, Kakinada Special Economic Zone has maintained the minutes of the personal hearing or that he had obtained the signature of the petitioner evidencing his presence at the hearing. In the absence of any material in support of the assertion of respondent No.3 that personal hearing, as a fact, was held and filing of affidavit by the Special Deputy Collector, SEZ, Kakinada Zone to the effect that he conducted personal hearing, the plea of respondent No.3 that opportunity of personal hearing was given to the petitioner does not deserve to be accepted.

Today, in Writ Petition No.18912 of 2007, I passed a detailed order emphasizing the need of affording opportunity of personal hearing. To avoid repetition, the reasons recorded therein shall be read as part of this order.

The writ petition is therefore allowed. Order dated 11.11.2007 is set aside. The consequential declaration made under Section 6 of the Act is also set aside. Respondent Nos.2 and 3 shall hold enquiry under Section 5A of the Act afresh and give the petitioner an opportunity of personal hearing before seeking to proceed further with the acquisition.

As a sequel to disposal of the writ petition in the manner indicated above, WPMP.No.32234 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

Date: 29.11.2007
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